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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 340

INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO,
HAVERHILL TYPOGRAPHICAL UNION No. 38,
WORCESTER TYPOGRAPHICAL UNION No. 165,
Petitioners

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR WORCESTER TELEGRAM PUBLISHING COMPANY, INC., AS AMICUS CURIAE

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BRIEF FOR WORCESTER TELEGRAM PUBLISHING COMPANY, INC., AS AMICUS CURIAE

This brief is submitted by Worcester Telegram Publishing Company, Inc., as Amicus Curiae, in support of the decree entered below enforcing an order of the National Labor Relations Board, as modified, in a proceeding to review and set aside, and on cross petition by the Board for enforcement of its order.

OPINIONS BELOW

The opinion of the Court of Appeals for the First Circuit is reported at 278 F. 2d 6. The Decision and Order of the National Labor Relations Board are reported at 123 N.L.R.B. 806.

INTEREST OF THE AMICUS CURIAE

Worcester Telegram Publishing Company, Inc., a corporation organized and existing under the laws of the State of Massachusetts, is the owner and publisher of two daily newspapers published at Worcester, Massachusetts. One, The Telegram, is published mornings and Sundays and the other, The Gazette, is published each weekday evening throughout the year.

This Amicus Curiae was the charging party in the unfair labor practice complaint filed in February, 1958, by the General Counsel of the National Labor Relations Board against the International Typographical Union and Worcester Typographical Union No. 165, the petitioners herein, hereinafter called "I.T.U." and "Local 165", respectively.[1]

The narrow question presented in this case is whether or not the petitioners may lawfully seek, and strike to secure, the inclusion of their General Laws and Foreman Clauses in a collective bargaining agreement. Underlying that question is a broader one presented by this case, namely, whether substantially all daily newspapers in the United States having contractual relations with subordinate locals of the I.T.U. must agree to observe closed shop conditions

[1] Also named as respondents in the proceedings instituted by General Counsel of the National Labor Relations Board were the Executive Council of the I.T.U. and the Scale Committee of Local 165 (R. 11).

in their composing rooms as a condition precedent to obtaining collective bargaining agreements with such local unions.

Since its founding in 1852, the I.T.U. has operated under and insisted upon closed shop conditions of employment as a mandatory requirement. Since 1947, the I.T.U. has adamantly persisted in its demands for the closed shop, notwithstanding enactments of the Congress of the United States and the decisions of the courts condemning such bargaining policies as unlawful.

This Amicus Curiae is vitally interested in a final determination of this fundamental issue by this Court. In submitting its brief, this Amicus seeks to persuade the Court to adopt the view that, in light of the historic and present policies of the I.T.U. as implemented through its subordinate locals, the court below was manifestly correct in holding that the petitioners herein committed unfair labor practices by insisting upon, threatening to strike and striking to secure acceptance of the General Laws and Foreman Clauses as a part of a collective bargaining agreement.

PRELIMINARY STATEMENT

Following a strike called against it by petitioners herein late in November, 1957 (R. 105), the Company filed charges with the Regional Director of the National Labor Relations Board[2] for the First Region against the I.T.U., its Executive Council, Local 165, and its Scale Committee. The charges alleged, *inter alia,* violations of Sections 8(b)(1)(B), 8(b)(2) and 8(b)(3) of the National Labor Relations Act, as

[2] Hereinafter called the "Board".

amended, 61 Stat. 136, 29 U.S.C. § 151, *et seq.*, hereinafter called the "Act".

On February 6, 1958, the General Counsel of the Board issued a complaint against the I.T.U., its Executive Council, Local 165 and its Scale Committee alleging the respondents had been and were engaging in various acts and conduct in violation of the Act (R. 11-21).

On the same day, the General Counsel issued another complaint on separate charges filed by the Haverhill Gazette Company against the I.T.U. and Haverhill Typographical Union No. 38 (R. 3-11). Subsequently, the two cases were consolidated for hearing by order of the Regional Director and hearings in the Worcester case were held in Worcester, Massachusetts, by a Trial Examiner of the Board in April, 1958.

In due course the Trial Examiner filed his Intermediate Report (R. 412). Thereafter, on April 17, 1959, the Board entered its Decision and Order affirming in large part the findings, conclusions and recommendations of the Trial Examiner (R. 480-485). The respondents, petitioners herein, thereupon filed their petitions in the court below to review the Board's order and set it aside and the Board countered with a petition to enforce its order (R. 498, 503, 505, 510).

The court below found certain specific practices to be unlawful, reversed the Board on other phases of its order, and entered a decree enforcing the order of the Board, as modified, in its opinion handed down on May 10, 1960, 278 F. 2d 6 (R. 513). Petitions for rehearing, filed on June 3, 1960, were denied by order of the court below entered on June 10, 1960 (R. 529).

A petition for a writ of certiorari was filed on August 18 and granted on November 7, 1960, 364 U.S. 878.

This Court has set this case for argument on the summary calendar following argument in cases No. 64,[3] No. 68[4] and No. 339[5] and in numerical sequence.

This case is easily distinguished from cases No. 64, 68 and 339. Each of those cases involved the application by the Board of its so-called *Brown-Olds*[6] refund remedy under which the Board ordered reimbursement of moneys exacted from employees as union dues, fees or assessments under a hiring system found by the Board to be illegal.

No such question is involved in this case.

Here the essential question involved is whether strikes called by petitioners to force agreement by the publisher-employers to specific contract provisions, designed and insisted upon to obtain and maintain closed shop conditions in the publishers' respective composing rooms, violated Section 8(b) of the Act.

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[3] *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* v. *N.L.R.B.*, 121 N.L.R.B. 1629 (1958); enforced as modified, 107 App. D.C. 188, 275 F. 2d 646 (1960).

[4] *Local 60, United Brotherhood of Carpenters and Joiners of America, etc., et al.* v. *N.L.R.B.*, 122 N.L.R.B. 396 (1958); enforced, 273 F. 2d 699 (C.A. 7th, 1960).

[5] *N.L.R.B.* v. *News Syndicate Company, Inc.*, 122 N.L.R.B. 818 (1959); enforcement denied, 279 F. 2d 323 (C.A. 2d, 1960).

[6] *United Association of Journeymen & Apprentices of Plumbing and Pipefitting Industry, etc., et al.*, 115 N.L.R.B. 594 (1956).

QUESTIONS PRESENTED

Specifically, these essential questions[7] are whether or not the petitioners herein committed unfair labor practices in violation of Section 8(b) of the Act, as amended, by insisting upon, and striking to secure, inclusion of the following clauses as a condition precedent to entering into a collective bargaining agreement:

> 1. "'The General Laws of the International Typographical Union, in effect at the time of execution of this agreement, not in conflict with state or federal law, shall govern relations between the parties on those subjects concerning which no provision is made in this contract.'"
>
> 2. "'The operation, authority, hiring for and control of each composing room shall be vested exclusively in the office through its representative, the foreman, who shall be a member of the Union. . . . The Union shall not discipline the foreman for carrying out written instructions of the publisher or his representatives authorized by this Agreement.'"

HISTORICAL BACKGROUND

As was said by the late Mr. Justice Holmes many years ago, in the consideration of this case, a page of history is worth a volume of logic.[8]

The history of the I.T.U. and its efforts to force closed shop conditions on publishers both before and after the Taft-Hartley amendments to the Act are fully set forth in *American Newspaper Publishers*

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[7] Two additional questions are stated in the brief filed by the petitioners herein (Brief for Petitioners, p. 3).

[8] *New York Trust Co., et al.* v. *Eisner*, 256 U.S. 345, at page 349 (1921).

Ass'n. v. *N.L.R.B.*,[9] 193 F. 2d 782 (C.A. 7th, 1951); cert. denied on the questions herein involved, 344 U.S. 816 (1952). In the *A.N.P.A.* case the Court of Appeals for the Seventh Circuit found that from long before the enactment of the Taft-Hartley amendments to the Act it was the unalterable policy of the I.T.U. that no member thereof would work for an employer except under conditions fixed by the I.T.U. One of these conditions was that I.T.U. members could only work in a composing room where all the employees were members of the union. Still another was that all members were subject to its General Laws which in turn could not be submitted to arbitration. Another was that the composing room be in charge of a foreman who was a member of the I.T.U.

These policies of the I.T.U. were not changed by the passage of the Taft-Hartley amendments to the Act.

The Court in the *A.N.P.A.* case further found that the I.T.U. maintained "absolute control" over its subordinate locals and members. Then it proceeded to examine how that power was used. It found that "upon passage of the Taft-Hartley Act . . . the ITU at once launched a campaign for the apparent purpose of *expressing its disapproval and defiance of the Act* and for the further purpose of instructing its subordinate locals and members on methods of avoiding the impact of the various provisions of the Act on the traditional practices and policies of the ITU" (Emphasis supplied) (193 F. 2d 782, at 789).

The Court cited numerous statements by Woodruff Randolph, President of the I.T.U., both immediately before and after the enactment of the Taft-Hartley

[9] Hereinafter called the "A.N.P.A." case.

Act which may be summarized by one of Randolph's statements that

> "'At no time has the International Typographical Union or any local thereof operated on other than a closed shop basis and whether it can make contracts thereof or not, it will continue to function on that basis.'" (*Id.* at 789).

And another after the passage of the Taft-Hartley Act that

> "'A condition of closed-shop exists in the printing industry as regards employment of composing room workers. Theories will not change that condition.'" (*Id.* at 790).

And still another:

> "'We will maintain our right to work only with union men under any circumstances.'" (*Id.* at 790).

While the *A.N.P.A.* case as subsequently reviewed by the Court of Appeals for the Seventh Circuit in 193 F. 2d 782 was pending before the Board, its Regional Director for the Ninth Region sought and obtained an injunction in the United States District Court for the Southern District of Indiana, to restrain the I.T.U., its officers and agents from continuing the unfair labor practices complained of during the pendency of the proceeding before the Board. *Evans* v. *International Typographical Union, et al.*, 76 F. Supp. 881 (1948). In that case the Court, through Judge Swygert, found that

> "Beginning about July 1, 1947, respondent Randolph and the other individual respondents composing the Executive Council of respondent ITU instigated, advised, and urged the respondent ITU and its members to adopt a policy of refrain-

ing from customary contractual relations with employers and of preventing subordinate local unions from entering into any collective bargaining agreements with employers. *The primary purpose of this policy was to preserve the closed shop for the ITU and to circumvent the statutory elimination of the closed shop.*" (Emphasis supplied.) (76 F. Supp. 881, at page 891).

At page 893, Judge Swygert found that on February 18, 1948, members of the I.T.U. voted to increase the assessment of their wages for the benefit of a fund with which respondent I.T.U. supported strikes. As a consequence, the average monthly revenue of said fund was increased from approximately $100,000 to approximately $1,000,000 and from one-half of one percent to a total of five percent of earnings.[10]

Judge Swygert further found that the respondents had indicated no intention to discontinue their insistence upon the maintenance by employers of closed shop conditions and, on the contrary, indicated every intention of continuing their conduct unless restrained. (*Id.* at 893).

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[10] Beginning with 1952 the membership of the I.T.U. repeatedly rejected referenda proposing the continuation of large special assessments for the Defense Fund. These rejections occurred in referenda conducted on October 22, 1952; January 28, 1953; September 16, 1953; November 28, 1956; and May 15, 1957. (See The Typographical Journal: December, 1952, page 330; March, 1953, page 142; November, 1953, page 266; January, 1957, page 3; July, 1957, page 14.) Finally, on October 9, 1957, the membership adopted a Convention Proposition to establish a Strike Benefit Fund by the levy of a one percent assessment on total earnings for a period of three months, with the proviso that if at any time after the three months the balance of the fund fell below $500,000 the assessment should again be levied and be in effect for three months after the fund reached $500,000. (See The Typographical Journal, November, 1957, page 165.)

The Court entered a broad decree restraining and enjoining the I.T.U., its officers and agents, pending the final adjudication of the case then before the Board, from

> "In any manner promulgating, disseminating, pursuing, observing, or in any wise giving effect to or ordering, instructing, requiring, recommending, inducing, encouraging or in any wise causing subordinate local unions and members of respondent International Typographical Union, or any of them, to promulgate, disseminate, pursue, observe, or in any wise give effect to, any policy, practice or course of conduct, including without limitation (a) conditions of employment, (b) Form P-6(a) contracts or modifications thereof, (c) provisions for cancellation of an entire agreement upon 60 days' notice, (d) laws, rules and decisions of respondent International Typographical Union, which in any manner discriminates against employees in regard to hire or tenure of employment, or any term or condition of employment, because of non-membership in respondent International Typographical Union or its subordinate local unions, or any of them, or causes or attempts to cause employers in the newspaper industry to so discriminate against employees, except in accordance with the provisos to Section 8(a)(3) of the National Labor Relations Act, as amended." (*Id.* at 895).

The respondents in the injunction proceeding subsequently were cited for contempt of Judge Swygert's order, and were found in contempt, by reason of their violations of certain portions thereof. *Evans* v. *I.T.U.*, 81 F. Supp. 675. (D.C.S.D., Ind., 1948).

Thereafter, the Court of Appeals for the Seventh Circuit found in the *A.N.P.A.* case that coercive in-

sistence upon a contractual provision requiring the employer to employ only union members as foremen indicated a persistent objective to continue closed shop conditions in the newspaper industry. In its decree, the Court directed the enforcement of the Board's order prohibiting coercive action by the I.T.U. designed to compel employers to continue hiring only union members as foremen in their composing rooms. The Court also decreed enforcement of the Board's order that the I.T.U. and its officers and agents cease and desist from:

> " 'Threatening to take strike action, or directing, instigating, or encouraging employees to engage in or to threaten to engage in, strike action, or approving or ratifying strike action taken by employees, for the purpose of requiring employers either non-contractually or as a matter of contractual obligation to violate Section 8(a)(3), by discriminating with respect to the employment or conditions of employment of any employee.' " (193 F. 2d 782, at page 797).

The Court in the *A.N.P.A.* case further found that the I.T.U. by insistence upon a variety of clauses was coercing employers into a closed shop in discrimination against non-union employees in violation of Section 8(a)(3) of the Act. The Court said it was of the opinion that it was not necessary for the Board to consider the validity of such clauses separately; that the further insistence on the use of these substantive clauses as a coercive scheme to secure a closed shop would be a violation of the Board's order and could be stopped by enforcement thereof. Finally, it said it had already been demonstrated in *Evans* v. *ITU*, D.C., 81 F. Supp. 675, the decision holding the I.T.U. in contempt.

". . . that a union could not avoid the consequences of its violation of a court's order enjoining its unfair labor practices by merely changing those activities to activities of a slightly different type or nature which had not been specifically litigated but which were used by the union to accomplish the same prohibited results." (193 F. 2d 782, at p. 799).

STATEMENT

The foregoing history of I.T.U. bargaining policies provides essential background for what took place in Worcester between December 31, 1954, when the last contract between the parties expired (R. 419), to November 29, 1957, when the strike was called (R. 105).

There is no dispute over what took place in these negotiations.

The union insisted upon an approved contract (R. 225- 226) providing for its unilaterally asserted jurisdiction,[11] and further requiring the Company to agree that the foreman must be a union member and requiring the Company to accept the General Laws clause as approved by the I.T.U. (R. 110, 111, 112, 117-119).

Beginning with October 24, 1956, there were six negotiation sessions between the parties in that year and, likewise, there were six such sessions in 1957 (R. 105). Four of the 1957 meetings were held on January 10, January 22, January 30 and February 8. The final sessions preceding the strike were held

[11] Inasmuch as the court below found that by its insistence on the jurisdiction clause the union did not refuse to bargain collectively as required by Section 8(b)(3) of the Act, it is unnecessary to detail negotiations over that clause in this statement.

on November 26 and November 27 and the strike began on November 29 (R. 105).

Federal and State Mediators were brought in by the union on January 22, 1957 (R. 112). Up to that time practically all of the discussion had dealt with the Company's strong objection to the three clauses on jurisdiction, union foreman and General Laws, mandated by the I.T.U. At th January 22, 1957, meeting, the Company's representatives were informed by the Federal Mediator, after her talk with the union representatives, that the disputed clauses would have to be settled first and the Company's representatives informed her that it could not agree to those clauses as submitted (R. 112).

William LaMothe, a representative of the I.T.U., entered the negotiations on January 10, 1957, and in reply to a question from the Company representatives as to whether the union had changed its position on the disputed clauses he said no. He stated further that the I.T.U. language on the laws and jurisdiction sections "must be taken" (R. 111-112). When, on January 22, it became obvious that an impasse had been reached, the Company was informed that the union would ask for a strike sanction vote on January 23 (R. 112-113).

The next meeting between the parties was on January 30 and at this meeting the Mediators were present. The Company's representatives informed the union representatives that the Company was willing to make a legal contract on wages, hours and working conditions but with no recognition of the General Laws requiring closed shop conditions, including the union foremen (R. 113). The union complained it had never

had a complete counter-proposal and the Company immediately offered to prepare and submit one (R. 113). On February 6, the Company submitted its counter-proposal (G.C. Ex. 5; R. 113). On February 8 this counter-proposal was discussed. It was obvious then that strike sanction had been denied (R. 226-227). The Company's representative said that it would give the men a posted notice providing for wages, hours and working conditions and that such notice would not be regarded by the Company as a contract, but only as an effort to resolve the impasse (R. 114).

The notice was drafted and discussed between the Company representatives and the union representatives. The posted notice provided for two wage increases of $4.00 each, payable on January 1, 1958, and January 1, 1959, and ending December 31, 1959. The union representatives objected to having a final cut-off date so the notice was changed to eliminate it. Union representatives inquired about the inclusion of other provisions which had been discussed previously and the Company representatives agreed to include these provisions in the notice. The notice was posted on February 9, 1957 (R. 114-116).

Following the posting of the notice on February 9, 1957, the President of Local 165 informed the membership that it had not been able to obtain strike sanction and further of the discussions incident to the notice which was posted. In making this statement the President said that, absent the foreman clause, the jurisdictional clause and the union laws clause which the representatives of the union had sought, the other conditions in the posted notice appeared to be quite fair (R. 232).

Insofar as the request for strike sanction and its denial were concerned, the President of Local 165 testified

> ". . . it would be economically impossible for us to strike without sanction. We have to eat you know." (R. 227).

The posting of the notice of February 9 created a hiatus in bargaining. Meanwhile the I.T.U. urged the membership to agree to a new assessment for strike purposes. As has been previously noted,[12] the membership in 1952 had rejected a recommendation of the I.T.U. Executive Council for the continuation of large special assessments for its Defense Fund and at various times between 1952 and July, 1957 the membership continued to reject such proposals.[13] On October 9, 1957, the membership approved a Convention proposal to establish a Strike Benefit Fund with a levy of a one percent assessment of total earnings for a period of three months with the proviso that, if at any time after the three months the balance of the fund fell below $500,000, the assessment should again be levied and be in effect for three months after the fund reached $500,000.

With this new money available, the I.T.U. immediately put pressure upon various newspapers to agree to contracts with the I.T.U. mandated union foreman,

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[12] n. 10, *supra*.

[13] Its recommendation was rejected in a referendum conducted in May, 1957. A subsequent recommendation was approved in a referendum on October 9, 1957. (n. 10, *supra*). In connection with the October recommendation the Annual Convention had been told that the I.T.U. had expended $39,000,000 in battling Taft-Hartley since 1947. The Typographical Journal, September, 1957, page 67s.

General Laws and jurisdiction clauses in them (R. 204). Negotiations were resumed at Worcester on November 26, 1957. At these Charles M. Lyon, First Vice President of the I.T.U. and a member of its Executive Council, appeared as a spokesman. He informed management that the union had taken a strike vote (R. 117). The representative of management again reiterated that all the Company sought was a legal contract, to which Mr. Lyon replied that if the Company agreed to the I.T.U. proposals it would have a legal contract. This was disputed by the Company (R. 117).

On November 26 the Company asked the unions' representatives to again look over the Company's proposal and they agreed to do so. On the following day —November 27—the final negotiation meeting was held. At this meeting the Company's representative stated that the union foreman, jurisdiction and I.T.U laws clauses were the stumbling blocks toward arriving at a written agreement; that in his opinion these clauses were illegal but that he was willing to arbitrate them (R. 117-119). To this suggestion, Vice President Lyon replied (R. 119):

> "No, the Union feels these demands, these three demands are legal; you say they are illegal; we would not have proposed them had we thought they were illegal; we will not withdraw these demands."

In response, management's representative stated that the Company was unwilling to enter into a contract in violation of the Taft-Hartley Law (R. 119).

Following this, there was a short caucus which the I.T.U. and Local 165 representatives requested. Upon their return to the conference room, Vice President

Lyon of the I.T.U., speaking for them, said that the matter had been placed in his hands by Local 165, and that because of differences of opinion regarding legalities of certain questions and because the union was dissatisfied with wages paid and hours worked, "We say good day and goodbye." Thereupon, the union representatives left. The following day was Thanksgiving but on the day after that, November 29, 1957, the strike took place (R. 119).

ARGUMENT

The Judgment of the Court Below Enforcing, as Modified, the Order of the Board Is Correct and Should Be Affirmed

The essential question presented for consideration here is whether the contract provisions in controversy would import illegal union security provisions into any collective bargaining agreement into which they might be incorporated. The court below found that they would. It is not disputed that these two provisions, namely, the General Laws Clause and the Foreman Clause, were submitted on a "take them" or take a strike basis. Petitioners herein refused to negotiate any changes, refused to arbitrate their validity and adamantly insisted upon their acceptance by this employer on threat of strike if it refused. Upon its refusal to yield to this demand the strike was called.

The General Laws Clause Clearly Was Designed to Require Closed Shop Conditions in the Composing Room of Any Publisher Who Agreed to Its Incorporation in a Contract With the I.T.U. and One of Its Subordinate Locals

There can be no doubt about the design and purpose of the I.T.U. in submitting this clause. As pointed out, *supra*, that organization, since its inception, has always insisted upon maintaining closed shop conditions in

all composing rooms of newspapers where its members work. It would be an imposition on this Court to review more fully than has been done the decision in the *A.N.P.A.* case, *supra*, As that Court found:

> "Upon passage of the Taft-Hartley Act . . . the ITU at once launched a campaign for the apparent purpose of expressing its disapproval and defiance of the Act and for the further purpose of instructing its subordinate locals and members on methods of avoiding the impact of the various provisions of the Act on the traditional practices and policies of the ITU." (193 F. 2d 782, at 789).

The I.T.U.'s coercive insistence that publishers entering into contracts with it shall agree that the General Laws of the I.T.U. in effect at the time of the execution of an agreement, not in conflict with state or federal law, shall govern relations between the parties on those subjects concerning which no provision is made in the contract was clearly in violation of the Act. A brief examination of the General Laws in effect at the time the strike occurred (G.C. Ex. 15; R. 383) demonstrates this beyond doubt.

The court below properly disposed of the "not in conflict with law clause" when it held that the I.T.U. and its Local 165 were acting at their peril when they sought to compel the employer to submit to the inclusion of the I.T.U. General Laws in the collective bargaining contract under negotiation. An important question on this point is who would determine whether there was any conflict of law in any General Laws provision. The answer is found in Article VIII, Section 7, of the Bylaws of the I.T.U. This section arrogates to the Executive Council of the I.T.U. authority to decide controversies and differences between

employers and subordinate unions. Thus, if an employer raised a question as to the illegality of any particular General Law, the I.T.U. Executive Council would make a unilateral determination of that question.

Of immediate interest on this point is Article II, Section 3, of the General Laws which reads:

> "It is imperatively ordered that the executive officers of the International Typographical Union shall not submit any of its laws to arbitration. Nor shall any subordinate union arbitrate whether or not any General Law of the International Typographical Union is effective."

Article III, Section 1, of the General Laws of 1957, in effect at the time of these negotiations, consists of a diatribe against the Taft-Hartley Act. It asserts as a policy of the I.T.U.

> ". . . that we maintain our historic rights and prerogatives, to which we are entitled and which we have enjoyed for more than a century."

It further asserts that local unions shall not seek to qualify as representatives under the Act and that they shall not seek to execute so-called "union shop" contracts because, *inter alia,* there are features of such a "union shop" that are unacceptable to I.T.U. members.

Article III, Sections 2 and 4, of the General Laws gives the I.T.U. President complete authority over negotiations between subordinate locals and publishers.

Article V, dealing with foremen, provides in Section 11 that

> "All persons performing the work of foremen or journeymen, at any branch of the printing

trade, in offices under the jurisdiction of the International Typographical Union, must be active members of the local union of their craft . . ."

Article VII provides in Section 2 thereof that in offices under the jurisdiction of the I.T.U.

". . . no person shall be eligible as a 'learner' on machines who is not a member of the International Typographical Union . . ."

Section 5 of Article VII further provides:

"It is the unalterable policy of the International Typographical Union that only members in good standing shall be employed in installing, operating, maintaining, servicing and repairing all typesetting, linecasting, typecasting, phototypesetting, tape perforating and material-making machines and all other mechanical devices . . . wherever located."

The I.T.U. had never informed its members that any of these particular clauses were invalid under the Taft-Hartley amendments to the Act and, notwithstanding the decision in the *A.N.P.A.* case, it persisted in demanding acceptance of such General Laws provisions from the time of that decision in 1951 right down to the date of the strike herein late in 1957.

So what was the situation on November 27, 1957, when the I.T.U. and Local 165 broke off negotiations with the employer at Worcester and ordered a strike to take place two days later? The union representatives had adamantly refused to discuss the General Laws provision, to negotiate the provision or to negotiate or arbitrate any of the General Laws themselves. They stated flatly that the General Laws Clauses were legal notwithstanding the contention of the employer's

representatives that many of them had been held illegal and that many of them were obviously illegal on their face.[14]

Clearly the lower court was correct when it said that the unions were acting at their peril when they sought to compel the employers to submit to their demand for the inclusion of the I.T.U. laws in collective bargaining contracts under negotiation.

The Union Foreman Clause Constituted a Most Important Part in the Scheme of Petitioners Herein for the Maintenance of Closed Shop Conditions

Since the decree of the Court of Appeals for the Seventh Circuit enforcing the order of the Board in the *A.N.P.A.* case, *supra*, coercive insistence upon acceptance by employers of the I.T.U. demand that all persons performing the work of foremen must be active members of the local union has been illegal. It has not only been illegal but it has been in flagrant contempt of that decree.

Petitioners were so advised by the employer representatives during bargaining but their representatives, including the First Vice President of the I.T.U., refused to consider any change in the Foreman Clause language and made it one of the issues upon which they called a strike. Thus, petitioners placed themselves in further violation of Section 8(b)(1)(B) of the Act. Petitioners also are in contempt of the sweeping decree of the Seventh Circuit enforcing the order of the Board, prohibiting coercive action by petitioners to obtain their standard Union Foreman Clause. As the Court found (193 F. 2d 782, at 805):

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[14] Petitioners concede that certain of the General Laws contemplate closed shop conditions. See Brief for Petitioners, at pages 13-14.

> "The respondents apparently thought that union foremen were important to their general scheme for maintaining closed shop conditions . . . The general scheme was secured by threats of strike, by restraint and coercion. Considering the record as a whole we find no basis for saying, contrary to the finding of the Trial Examiner and of the Board, that the respondents, the ITU and its agents did not restrain and coerce the employers in the selection of their representatives for the purposes of the adjustment of grievances in violation of § 8(b)(1)(B) of the Act. . ."

The record herein amply justifies what that Court said.

As pointed out by the Trial Examiner, petitioners were informed during the bargaining sessions that if they struck to obtain the Union Foreman Clause, the matter would be called to the attention of the Board with a request that it seek a citation for contempt of the decree. The strike was called and, as the record unquestionably shows, the Board did inform the petitioners herein of its intention to seek to have them cited for contempt on the Foreman Clause issue. Otherwise, why the letters appearing as General Counsel's Exhibit 12 and General Counsel's Exhibit 13 at pages 380-381 of the Record?

This Court can take official notice of the fact that prior to the institution of contempt proceedings, the Board notifies the offending party of its intention so to do, thereby giving it an opportunity to clear itself of contempt without appearing in a proceeding. Since such a notification undoubtedly was given to the petitioners in this case, it is important to observe what was done.

On January 16, 1958, when the strike was well into its second month, the President and Secretary-Treasurer of Local 165, addressed a letter to the publisher of Worcester Telegram Publishing Co., Inc., stating:

> "This is to advise you that the clause in our proposed agreement calling for the employment of a member of this union as a foreman was not, and is not, an issue in the present lockout. We are now willing, as we have been at all times, to enter into an agreement without this clause if other issues are satisfactorily adjusted." (G.C. Ex. 12; R. 380-381).

Apparently this letter was not satisfactory to the Board. In the first place, it was obvious that there was no lockout by the employer but a strike by the petitioners. Secondly, the withdrawal of the clause was conditioned upon the adjustment of other issues satisfactorily to the union. So on January 24, 1958, Woodruff Randolph, President of the I.T.U., addressed a further letter to the Company in which he said:

> "We hereby withdraw our demand for a contract clause calling for the employment of a member of this union as foreman." (G.C. Ex. 13; R. 381).

Thus, approximately two months after the strike had begun, the demand for a union foreman clause was withdrawn but the petitioners did not call off the strike when they withdrew that demand. In fact, they have never called off the strike.

The court below was correct when it found that

> ". . . by insisting on the foreman clause as they wanted it, the unions violated § 8(b)(2) of

the Act . . . for the effect of the clause would be to cause the employers to discriminate in favor of union men in appointing their foremen thereby encouraging aspirants for that position to join the union." (278 F. 2d 6, at p. 12).

The court below also was correct when it found that

". . . by insisting that the foremen must be union members, the unions were restraining and coercing the employers in the selection of their representatives for grievance adjustment purposes. Not only would the clause as proposed by the unions limit the employers' choice of foremen to union members, but it would also give the unions power to force the discharge or demotion of a foreman by expelling him from the union." (*Id.* at 12).

CONCLUSION

For the reasons set forth above, we respectfully urge that the judgment of the court below be affirmed.

Respectfully submitted,

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